

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TONY COLIDA,

Plaintiff,

-against-

07 Civ. 9260 (RJH)

SONY ERICSSON MOBILE
COMMUNICATION (USA) INC.,

Defendant.

ORDER

Defendant's motion to dismiss is granted. Plaintiff's claims are barred by *res judicata*. This is the third time Colida has brought suit against defendant in this district alleging that defendant's flip phones infringe his design patents. This Court granted summary judgment for defendant in the first suit, holding that the accused design did not infringe Colida's patents as a matter of law and noting that Colida's claims "border[ed] on the vexatious." *Colida v. Sony Corp. of Amer.*, 04 Civ. 2093, 2005 WL 267231 (S.D.N.Y. Feb. 2, 2005). Judge Crotty dismissed the second suit on *res judicata* grounds because the accused design was "essentially the same for the purposes of claim preclusion" as the design in the first suit. *Colida v. Sony Corp. of Amer.*, 06 Civ. 0257, 2006 WL 3068669 (S.D.N.Y. Oct. 26, 2006). Because the design plaintiff now accuses also shares essential similarity with the designs at issue in the prior two suits, this suit must also be dismissed.

Defendant has also moved for a permanent anti-suit injunction and other sanctions pursuant to Rule 11. Since that motion was filed, another court has permanently enjoined

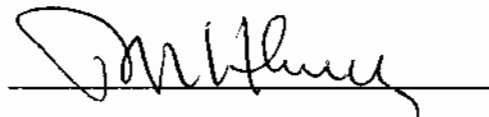
Colida from filing any new action in this district arising from the four patents at issue in this case. *Colida v. Nokia*, No. 07 Civ. 8056, 2008 WL 4449419, at *3 (S.D.N.Y. Sept. 28, 2008) (Wood, J.), *aff'd* 347 Fed. App'x 568 (Fed. Cir. 2009). The Court finds it unnecessary to expand Judge Wood's order, but Colida is reminded that the permanent injunction remains in place. With regard to the monetary sanctions defendant has requested, the Court agrees with Judge Wood's decision to adopt Magistrate Judge Pitman's recommendation to deny such sanctions. *See Colida v. Nokia, Inc.*, 2008 WL 4517188, at *13 (S.D.N.Y. May 6, 2008). Though Colida has certainly violated Rule 11 in bringing this frivolous suit—as he has on many other occasions—monetary sanctions are not likely to deter him from committing future violations, and it appears that he does not have the ability to pay sanctions in any case. *See id.* Thus, defendant's motion for sanctions is denied. The Court reiterates that, pursuant to the terms of Judge Wood's order, Colida may not file “any new action against any defendant in the Southern District of New York that arises from or relates to Patent 050, 184, 347, or 349 without first obtaining leave of court” in accordance with the conditions set forth in the order. *Colida v. Nokia*, 2008 WL 4449419, at *3 (S.D.N.Y. Sept. 28, 2008)

For the foregoing reasons, the motion to dismiss is granted and the motion for sanctions is denied. The Clerk is directed to close this case.

SO ORDERED.

Dated: New York, New York

April 28, 2010



Richard J. Holwell
United States District Judge